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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/598,672

09/07/2006

Evert Eklind

112701-752

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09/02/2009

EXAMINER

SOOHOO, TONY GLEN

ART UNIT

PAPER NUMBER

1797

NOTIFICATION DATE

DELIVERY MODE

09/02/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

chicago.patents@klgates.com

Office Action Summary	Application No. 10/598,672	Applicant(s) EKLIND, EVERT	
	Examiner Tony G. Soohoo	Art Unit 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12-12-2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities: The specification is in a European format. Whereas this application is now a US application, the inclusion of section headings such as for example "Background of the invention", "Summary of the Invention", "Brief Description of the Drawings", "Detailed Description" is strongly suggested.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The apparatus claims are narrative in nature to a cooperation of elements, and fails to positively and distinctly point out the elements which applicant considers as the invention.

In Claim 1, line 5, "[an element] which is rotatably attached to the device" (emphasis added), where the invention is "the device" itself, it is structurally unclear how one if the invention's element is attached to the device itself.

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In claim 1, line 5, “and is associated to an external , magnetic member” (emphasis added) is vague and so unclear in its structural connection, that an artisan can not determine the claimed scope of its position or connection of the element with the magnetic member.

Claim 2 is unclear in physical structure whereby the parent claim points to "an external magnetic member" it is unclear in being external to what?

Claim 2 states that the magnetic member is “no-permanent-magnetic iron ring”, this appears to suggest that the member is not “magnetic” in the accepted term but merely ferrous (i.e. “magnetizable”) which would accept temporarily accept a magnetic flux. The claim raises confusion to the meets and bound of the term magnetic member of claim 1 by the statement of claim 2.

In claim 3 "and the electromagnets are arranged so as to be activated cyclically in turn". It is unclear how the physical arrangement of elements may cause a sequence of activation, since the claim does not positively claim a controller. The claim appears to be incomplete in structure to perform the recited operation.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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5. Claim 7 is rejected under 35 U.S.C. 102(b) as being anticipated by Anderson 4649118.

a. The Anderson reference discloses a device comprising an outlet tube (38a, 71) which conducts at least one liquid jet, (see figure 4) via 81, outwards arrows towards an interior of a vessel (20). Liquid is supplied through the outlet tube 71, column 5, line 35-37, and lines 67 through column 6, line 5 ("fresh medium, or other liquids or gases, into the sealed culture vessel", "fresh nutrient medium, chemicals,". The outlet tube is rotatably attached and associated with an external magnetic member 55a (external at the end of tube) and an outside magnetic rotation driver 64, so as to cause rotation of the tube and jet. The rotation of the jet would cause a rotation at a determined appropriate speed by the controller and provide a jet from 81 emerging with a centrifugal effect. (column 4, lines 25 – 37).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-3, and 8-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson 4649118 in view of Kindman 5529391.

Anderson discloses all of the recited subject matter as outlined above, and as required in the claims, however does not disclose the particulars of the magnetic drive being an three element electromagnet with pole pointed to the magnet, and the magnetic member on the tube being non-permanent-magnetic iron ring.

The Kindman reference discloses an electromagnetic drive arrangement, for example figure 3, with at least three electro-magnets 50 with poles pointed to and spaced about a vessel V so as to rotate a magnetic member S.

The Anderson reference, column 4, lines 65-68, proposes that the magnetic drive motor 60 may be substituted with alternate means for moving magnetic flux field in relation to the magnet 55. Whereas the Kindman reference discloses an alternate electromagnetic drive arrangement, in light of the knowledge gleaned by the prior art and the motivation provided by Anderson, it would have been obvious to a person having ordinary skill in the art to substitute for the motor 60 arrangement with the type of electromagnetic drive arrangement such as Kindman, whereas it is a mere substitution of functional structural equivalents structures which would produce a rotation of the magnet for stirring.

Regarding the magnetic member on the tube being an external non-permanent-magnetic iron ring, the Anderson reference does disclose an external magnet from that of the tube, however differs from the claim as to the 1) shape of the magnet being a ring, 2) the type material being iron.

In regard to the shape of the magnetic member being a ring, it would have been obvious to one of ordinary skill in the art at the time of the invention was

made to modify shape of the magnet to be a ring shape, whereas it is nothing more than one of numerous configurations a person of ordinary skill in the art would find obvious in order to provide a more advantageous or easily constructed system since it has been held that, absent any unexpected result, a mere change in form or shape on the basis of suitability is a matter of obvious mechanical design choice. In re Dailey, 149 USPQ 47 (CCPA 1976).

Regarding the magnet material being iron, it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute for the magnet material with a temporarily magnetic ferrous material such as iron for reasons of lower cost of construction than that of a true magnet, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

Regarding the phrase “external”, it is noted that the claims do not positively define the direction or relative elements which is deemed as being “external” or “internal” to one another. Absent any further defining language, the claim is read in its broadest reasonable interpretation to encompass the scope of the magnet being external to the end of the tube as shown in the prior art arrangement.

However it is further noted that if applicant amends language to the position of the magnet ring being located out a radial distance outward from the tube, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to rearrange the magnet to an position at a radial distance outside the tube, whereas it is nothing more than one of numerous configurations a person of ordinary skill in the art would find obvious in order to

provide a more advantageous or easily constructed system since it has been held that, absent any unexpected result, since it has been held that rearranging parts of an invention involves only routine skill in the art. In re Japikse, 86 USPQ 70.

Note: Regarding claim 10, the Anderson reference teaches the introduction of fluid into the device. It is known to provide pumps to produce a pressure differential to urge fluid to flow through a tube, accordingly, in light of the common knowledge gleaned by the prior art fluid handing and plumbing by the use of pumps to move fluid, it would have been obvious to a person having ordinary skill in the art to provide the liquid by utilizing a pump.

Note: Regarding claim 13, the Anderson reference discloses various liquids maybe provided. Also, it is known to provide water into a vessel as a cleaning step. It would have been obvious to a person having ordinary skill in the art to substitute the liquid with water so as to produce a flushing or washing effect so that the vessel may be cleaned for a subsequent use of different materials.

Regarding issues to a "drink vessel" or such language is directed to the intended use of the structure, and the method claims does not point out any step which limits the liquid to be consumed by a user.

8. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson 4649118 in view of Kindman 5529391 as applied to claim 1 above, and further in view of Ono 4596779.

Anderson discloses all of the recited subject matter as outlined above, and as required in the claims, however does not disclose the particulars of the outlet tube being connected to a goose neck inlet.

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The Ono reference teaches a housing 52, 56 which is provided with a gooseneck portion 60 (and see bend in 62) and further connected to a lower outlet tube 66, 68 (see also fig 2, 4). The bend provides a greater rotation so the agitator orbits inside the vessel.

In light of the knowledge gleaned by the prior art to Ono, it would have been obvious to a person having ordinary skill in the art to provide for the outlet tube with a gooseneck and or gooseneck bend such as shown by Ono so as to provide an offset agitator tube such that it may orbit in the vessel to provide better fluid distribution and agitation.

Allowable Subject Matter

9. Claims 4-5 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tony G. Soohoo whose telephone number is (571) 272 1147. The examiner can normally be reached on 8AM-5PM, Tues-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Walter Griffin can be reached on 571-272-1189. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Tony G Soohoo/
Primary Examiner, Art Unit 1797

Tony G Soohoo
Primary Examiner
Art Unit 1797
